

AN ACT

relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (e), Section 1001.004, Occupations Code, is amended to read as follows:

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;

(3) repeal or amend a law affecting or regulating a licensed state land surveyor; or

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

SECTION 2. Sections 1001.005 and 1001.051, Occupations Code, are amended to read as follows:

1 Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board
2 of Professional Engineers is subject to Chapter 325, Government
3 Code (Texas Sunset Act). Unless continued in existence as provided
4 by that chapter, the board is abolished and this chapter expires
5 September 1, 2015 [~~2003~~].

6 Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under
7 this subchapter applies only to a person who does not offer [~~is not~~
8 ~~directly or indirectly represented~~] to the public to perform [~~be~~
9 ~~legally qualified to engage in the practice of~~] engineering
10 services.

11 SECTION 3. Section 1001.057, Occupations Code, is amended
12 to read as follows:

13 Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS
14 ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall not be construed to
15 apply to the activities of a private corporation or other business
16 entity, or the activities of the full-time employees or other
17 personnel under the direct supervision and control of the business
18 entity, on or in connection with [~~A regular full-time employee of a~~
19 ~~private business entity is exempt from the licensing requirements~~
20 ~~of this chapter if~~]:

21 (1) reasonable modifications to existing buildings,
22 facilities, or other fixtures to real property not accessible to
23 the general public and which are owned, leased, or otherwise
24 occupied by the entity [~~the employee performs services exclusively~~
25 ~~for the business entity or an affiliate of that entity~~]; or

26 (2) activities related only to the research,
27 development, design, fabrication, production, assembly,

1 integration, or service of products manufactured by the entity [~~the~~
2 ~~employee's services:~~

3 [~~(A) are on or in connection with property:~~

4 [~~(i) owned or leased by the business entity~~
5 ~~or affiliate, or~~

6 [~~(ii) in which the business entity or~~
7 ~~affiliate has an interest, estate, or possessory right, or~~

8 [~~(B) affect exclusively the property, products,~~
9 ~~or interests of the business entity or affiliate, and~~

10 [~~(3) the employee does not have the final authority to~~
11 ~~approve, or the ultimate responsibility for, engineering designs,~~
12 ~~plans, or specifications relating to the property or products that~~
13 ~~are to be:~~

14 [~~(A) incorporated into a fixed work, system, or~~
15 ~~facility on the property of another, or~~

16 [~~(B) made available to the public].~~

17 (b) [~~This exemption includes the use of a job title or~~
18 ~~personnel classification by the employee if the employee does not~~
19 ~~use:~~

20 [~~(1) the title or classification in connection with an~~
21 ~~offer to the public to perform engineering services, and~~

22 [~~(2) a name, title, or word that tends to convey the~~
23 ~~impression that a person not licensed under this chapter is~~
24 ~~offering to the public to perform engineering services.~~

25 [~~(c)~~] A person who claims an exemption under this section
26 and who is determined to have directly or indirectly represented
27 the person as legally qualified to engage in the practice of

1 engineering or who is determined to have violated Section 1001.301
2 may not claim an exemption until the 10th anniversary of the date
3 the person made that representation.

4 (c) This exemption does not prohibit:

5 (1) a licensed professional engineer who intends to
6 incorporate manufactured products into a fixed work, system, or
7 facility that is being designed by the licensee on public property
8 or the property of others from requiring the manufacturer to have
9 plans or specifications signed and sealed by a licensed
10 professional engineer; or

11 (2) the board from requiring, by rule, that certain
12 manufactured products delivered to or used by the public must be
13 designed and sealed by a licensed professional engineer, if
14 necessary to protect the public health, safety, and welfare.

15 (d) For purposes of this section, "products manufactured by
16 the entity" also includes computer software, firmware, hardware,
17 semiconductor devices, and the production, exploration, and
18 transportation of oil and gas and related products.

19 SECTION 4. Subsections (b) and (c), Section 1001.058,
20 Occupations Code, are amended to read as follows:

21 (b) ~~[This exemption includes the use of a job title or~~
22 ~~personnel classification by the employee if the employee does not~~
23 ~~use:~~

24 ~~[(1) the title or classification in connection with an~~
25 ~~offer to the public to perform engineering services; and~~

26 ~~[(2) a name, title, or word that tends to convey the~~
27 ~~impression that a person not licensed under this chapter is~~

1 ~~offering to the public to perform engineering services.~~

2 ~~[(c)]~~ A person who claims an exemption under this section
3 and who is determined to have directly or indirectly represented
4 the person as legally qualified to engage in the practice of
5 engineering or who is determined to have violated Section 1001.301
6 may not claim an exemption until the 10th anniversary of the date
7 the person made that representation.

8 SECTION 5. Subchapter B, Chapter 1001, Occupations Code, is
9 amended by adding Section 1001.066 to read as follows:

10 Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This
11 chapter does not:

12 (1) apply to a business entity or the business entity's
13 employees to the extent that the entity's products or services
14 consist of space vehicles or space services provided to, or space
15 technology transfer programs required by, the National Aeronautics
16 and Space Administration; or

17 (2) prohibit the use of the term "engineer" or
18 "engineering" in a job title or personnel classification by an
19 employee described by Subdivision (1) to the extent that the use of
20 the title or classification is related to activities described by
21 that subdivision.

22 SECTION 6. Subsection (b), Section 1001.101, Occupations
23 Code, is amended to read as follows:

24 (b) Appointments to the board shall be made without regard
25 to the race, color, disability ~~[creed]~~, sex, religion, age, or
26 national origin of the appointee.

27 SECTION 7. Subsection (a), Section 1001.102, Occupations

1 Code, is amended to read as follows:

2 (a) A person may not be [~~is not eligible for appointment as~~]
3 a public member of the board if the person or the person's spouse:

4 (1) is registered, certified, or licensed by a [~~an~~]
5 ~~occupational~~] regulatory agency in the field of engineering;

6 (2) is employed by or participates in the management
7 of a [~~an agency or~~] business entity or other organization regulated
8 by or receiving money from the board [~~related to the field of~~
9 ~~engineering~~]; [~~or~~]

10 (3) owns or controls, directly or indirectly, more
11 than a 10 percent [~~has a financial~~] interest [~~other than as a~~
12 ~~consumer~~] in a business entity or other organization regulated by
13 or receiving money from the board; or

14 (4) uses or receives a substantial amount of tangible
15 goods, services, or money from the board other than compensation or
16 reimbursement authorized by law for board membership, attendance,
17 or expenses [~~related to the field of engineering~~].

18 SECTION 8. Section 1001.103, Occupations Code, is amended
19 to read as follows:

20 Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

21 (a) In this section, "Texas trade association" means a cooperative
22 and voluntarily joined statewide association of business or
23 professional competitors in this state designed to assist its
24 members and its industry or profession in dealing with mutual
25 business or professional problems and in promoting their common
26 interest.

27 (a-1) A person may not be a [A] member [~~or employee~~] of the

1 board and may not be a board employee employed in a "bona fide
2 executive, administrative, or professional capacity," as that
3 phrase is used for purposes of establishing an exemption to the
4 overtime provisions of the federal Fair Labor Standards Act of 1938
5 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

6 (1) the person is an officer, employee, or paid
7 consultant of a Texas trade association in the field of engineering
8 [~~industry~~]; or

9 (2) the person's spouse [~~related within the second~~
10 ~~degree by affinity or consanguinity, as determined under Chapter~~
11 ~~573, Government Code, to a person who~~] is an officer, manager
12 [~~employee~~], or paid consultant of a Texas trade association in the
13 field of engineering [~~industry~~].

14 (b) A person may not be [~~serve as~~] a member of the board or
15 act as the general counsel to the board if the person is required to
16 register as a lobbyist under Chapter 305, Government Code, because
17 of the person's activities for compensation on behalf of a
18 profession related to the operation of the board.

19 SECTION 9. Section 1001.106, Occupations Code, is amended
20 by amending Subsection (a) and adding Subsection (c) to read as
21 follows:

22 (a) It is a ground for removal from the board that a member:

23 (1) does not have at the time of taking office
24 [~~appointment~~] the qualifications required by Sections 1001.101 and
25 [~~Section~~] 1001.102;

26 (2) does not maintain during service on the board the
27 qualifications required by Sections 1001.101 and [~~Section~~]

1 1001.102;

2 (3) is ineligible for membership under Section
3 1001.102 or [~~violates a prohibition established by Section~~]
4 1001.103; [~~or~~]

5 (4) cannot, because of illness or disability,
6 discharge the member's duties for a substantial part of the member's
7 term; or

8 (5) is absent from more than half of the regularly
9 scheduled board meetings that the member is eligible to attend
10 during [~~held in~~] a calendar year without an excuse approved by a
11 majority vote of the board[~~, excluding meetings held while the~~
12 ~~person was not a member~~].

13 (c) If the executive director has knowledge that a potential
14 ground for removal exists, the executive director shall notify the
15 presiding officer of the board of the potential ground. The
16 presiding officer shall then notify the governor and the attorney
17 general that a potential ground for removal exists. If the
18 potential ground for removal involves the presiding officer, the
19 executive director shall notify the next highest ranking officer of
20 the board, who shall then notify the governor and the attorney
21 general that a potential ground for removal exists.

22 SECTION 10. Section 1001.108, Occupations Code, is amended
23 to read as follows:

24 Sec. 1001.108. OFFICERS. The governor shall designate a
25 member of the board as the presiding officer of the board to serve
26 in that capacity at the will of the governor. The board shall elect
27 annually from its members [~~a presiding officer,~~] an assistant

1 presiding officer~~[7]~~ and a secretary.

2 SECTION 11. Subchapter C, Chapter 1001, Occupations Code,
3 is amended by adding Section 1001.112 to read as follows:

4 Sec. 1001.112. TRAINING. (a) A person who is appointed to
5 and qualifies for office as a member of the board may not vote,
6 deliberate, or be counted as a member in attendance at a meeting of
7 the board until the person completes a training program that
8 complies with this section.

9 (b) The training program must provide the person with
10 information regarding:

11 (1) this chapter;

12 (2) the programs operated by the board;

13 (3) the role and functions of the board;

14 (4) the rules of the board, with an emphasis on the
15 rules that relate to disciplinary and investigatory authority;

16 (5) the current budget for the board;

17 (6) the results of the most recent formal audit of the
18 board;

19 (7) the requirements of:

20 (A) the open meetings law, Chapter 551,
21 Government Code;

22 (B) the public information law, Chapter 552,
23 Government Code;

24 (C) the administrative procedure law, Chapter
25 2001, Government Code; and

26 (D) other laws relating to public officials,
27 including conflict-of-interest laws; and

1 (8) any applicable ethics policies adopted by the
2 board or the Texas Ethics Commission.

3 (c) A person appointed to the board is entitled to
4 reimbursement, as provided by the General Appropriations Act, for
5 the travel expenses incurred in attending the training program
6 regardless of whether the attendance at the program occurs before
7 or after the person qualifies for office.

8 SECTION 12. Subchapter D, Chapter 1001, Occupations Code,
9 is amended by adding Sections 1001.153 through 1001.156 to read as
10 follows:

11 Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board
12 shall develop and implement policies that clearly separate the
13 policy-making responsibilities of the board and the management
14 responsibilities of the executive director and the staff of the
15 board.

16 Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT
17 INFORMATION. The executive director or the executive director's
18 designee shall provide to members of the board and to board
19 employees, as often as necessary, information regarding the
20 requirements for office or employment under this chapter, including
21 information regarding a person's responsibilities under applicable
22 laws relating to standards of conduct for state officers or
23 employees.

24 Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY;
25 REPORT. (a) The executive director or the executive director's
26 designee shall prepare and maintain a written policy statement that
27 implements a program of equal employment opportunity to ensure that

1 all personnel decisions are made without regard to race, color,
2 disability, sex, religion, age, or national origin.

3 (b) The policy statement must include:

4 (1) personnel policies, including policies relating
5 to recruitment, evaluation, selection, training, and promotion of
6 personnel, that show the intent of the board to avoid the unlawful
7 employment practices described by Chapter 21, Labor Code; and

8 (2) an analysis of the extent to which the composition
9 of the board's personnel is in accordance with state and federal law
10 and a description of reasonable methods to achieve compliance with
11 state and federal law.

12 (c) The policy statement must:

13 (1) be updated annually;

14 (2) be reviewed by the Commission on Human Rights for
15 compliance with Subsection (b)(1); and

16 (3) be filed with the governor's office.

17 Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE
18 PROGRAM. The executive director or the executive director's
19 designee shall provide to board employees information and training
20 on the benefits and methods of participation in the state employee
21 incentive program under Subchapter B, Chapter 2108, Government
22 Code.

23 SECTION 13. Section 1001.203, Occupations Code, is amended
24 to read as follows:

25 Sec. 1001.203. RULES RESTRICTING ADVERTISING OR
26 COMPETITIVE BIDDING. (a) The board by rule shall prescribe
27 standards for compliance with Subchapter A, Chapter 2254,

1 Government Code [~~may restrict competitive bidding~~].

2 (b) Except as provided by Subsection (a), the [~~The~~] board
3 may not adopt rules [~~a rule~~] restricting advertising or competitive
4 bidding by a license holder [~~person licensed under this chapter~~]
5 except to prohibit false, misleading, or deceptive practices [~~by~~
6 ~~the person~~].

7 (c) In its rules to prohibit false, misleading, or deceptive
8 practices, the [~~The~~] board may not include [~~in its rules to prohibit~~
9 ~~false, misleading, or deceptive practices~~] a rule that:

10 (1) restricts the [~~person's~~] use of any medium for
11 advertising;

12 (2) restricts the use of a license holder's [~~person's~~]
13 personal appearance or [~~use of the person's~~] voice in an
14 advertisement;

15 (3) relates to the size or duration of an
16 advertisement by the license holder [~~person~~]; or

17 (4) restricts the license holder's [~~person's~~]
18 advertisement under a trade name.

19 SECTION 14. Subchapter E, Chapter 1001, Occupations Code,
20 is amended by adding Section 1001.2035 to read as follows:

21 Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL
22 CONVICTION. The board shall adopt rules and guidelines as
23 necessary to comply with Chapter 53.

24 SECTION 15. Subsection (a), Section 1001.204, Occupations
25 Code, is amended to read as follows:

26 (a) The board shall establish the following [~~reasonable and~~
27 ~~necessary~~] fees in amounts reasonable and necessary to cover the

1 costs of administering [~~for the administration of~~] this chapter [~~in~~
2 ~~amounts not to exceed~~]:

- 3 (1) license fee; [~~..... \$50~~]
- 4 (2) annual renewal fee; [~~..... \$75~~]
- 5 (3) reciprocal license fee; [~~..... \$50~~]
- 6 (4) duplicate license fee; [~~..... \$5~~]
- 7 (5) engineer-in-training certificate fee; [~~..... \$15~~]
- 8 (6) roster of engineers fee; [~~..... \$10~~]
- 9 (7) examination fee; [~~..... \$200~~]
- 10 (8) registration fee for engineering firm; and
- 11 (9) inactive status fee. [~~..... \$100~~]

12 SECTION 16. Subsection (c), Section 1001.206, Occupations
13 Code, is amended to read as follows:

14 (c) The fee increase imposed by Subsection (a) does not
15 apply to an engineer who:

- 16 (1) meets the qualifications for an exemption under
17 Section 1001.057 or 1001.058 but does not claim that exemption;
18 [~~or~~]
- 19 (2) is disabled as described by Section 1001.205; or
- 20 (3) is on inactive status as provided by Section
21 1001.355.

22 SECTION 17. Section 1001.210, Occupations Code, is amended
23 to read as follows:

24 Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The
25 board shall [~~may~~] recognize, prepare, or administer continuing
26 education programs for its license holders. A license holder must
27 participate in the programs to the extent required by the board to

1 keep the person's license.

2 (b) The board may not require a license holder to obtain
3 more than 15 hours of continuing education annually. The board
4 shall permit a license holder to certify at the time the license is
5 renewed that the license holder has complied with the board's
6 continuing education requirements.

7 (c) The board shall permit a license holder to receive
8 continuing education credit for educational, technical, ethical,
9 or professional management activities related to the practice of
10 engineering, including:

11 (1) successfully completing or auditing a course
12 sponsored by an institution of higher education;

13 (2) successfully completing a course certified by a
14 professional or trade organization;

15 (3) attending a seminar, tutorial, short course,
16 correspondence course, videotaped course, or televised course;

17 (4) participating in an in-house course sponsored by a
18 corporation or other business entity;

19 (5) teaching a course described by Subdivisions
20 (1)-(4);

21 (6) publishing an article, paper, or book on the
22 practice of engineering;

23 (7) making or attending a presentation at a meeting of
24 a technical or engineering management society or organization or
25 writing a paper presented at such a meeting;

26 (8) participating in the activities of a professional
27 society or association, including serving on a committee of the

1 organization; and

2 (9) engaging in self-directed study.

3 (d) A license holder may not receive more than five
4 continuing education credit hours annually for engaging in
5 self-directed study [~~persons regulated by the board under this~~
6 ~~chapter. Participation in the programs is voluntary~~].

7 SECTION 18. Subchapter E, Chapter 1001, Occupations Code,
8 is amended by adding Sections 1001.214, 1001.215, and 1001.216 to
9 read as follows:

10 Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop
11 and implement a policy requiring the executive director and board
12 employees to research and propose appropriate technological
13 solutions to improve the board's ability to perform its functions.
14 The technological solutions must:

15 (1) ensure that the public is able to find information
16 about the board on the Internet;

17 (2) ensure that persons who want to use the board's
18 services are able to:

19 (A) interact with the board through the Internet;
20 and

21 (B) access any service that can be provided
22 effectively through the Internet; and

23 (3) be cost-effective and developed through the
24 board's planning processes.

25 Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE
26 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
27 implement a policy to encourage the use of:

1 (1) negotiated rulemaking procedures under Chapter
2 2008, Government Code, for the adoption of board rules; and

3 (2) appropriate alternative dispute resolution
4 procedures under Chapter 2009, Government Code, to assist in the
5 resolution of internal and external disputes under the board's
6 jurisdiction.

7 (b) The board's procedures relating to alternative dispute
8 resolution must conform, to the extent possible, to any model
9 guidelines issued by the State Office of Administrative Hearings
10 for the use of alternative dispute resolution by state agencies.

11 (c) The board shall designate a trained person to:

12 (1) coordinate the implementation of the policy
13 adopted under Subsection (a);

14 (2) serve as a resource for any training needed to
15 implement the procedures for negotiated rulemaking or alternative
16 dispute resolution; and

17 (3) collect data concerning the effectiveness of those
18 procedures, as implemented by the board.

19 Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF
20 ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on
21 the Practice of Engineering and Architecture is an advisory
22 committee to the board and to the Texas Board of Architectural
23 Examiners. The advisory committee consists of:

24 (1) three members of the board and one practicing
25 architectural engineer appointed by the board; and

26 (2) three members of the Texas Board of Architectural
27 Examiners and one practicing architect appointed by that board.

1 (b) Members of the advisory committee serve staggered
2 six-year terms with the terms of one or two members appointed by the
3 board and one or two members appointed by the Texas Board of
4 Architectural Examiners expiring each odd-numbered year.

5 (c) The advisory committee shall meet at least twice a year.

6 (d) The advisory committee shall work to resolve issues that
7 result from the overlap between activities that constitute the
8 practice of engineering and those that constitute the practice of
9 architecture. The advisory committee shall assist each agency in
10 protecting the public rather than advancing the interests of either
11 agency or the profession it regulates.

12 (e) The advisory committee shall issue advisory opinions to
13 the board and to the Texas Board of Architectural Examiners on
14 matters relating to the practice of engineering and the practice of
15 architecture, including:

16 (1) opinions on whether certain activities constitute
17 the practice of engineering or the practice of architecture;

18 (2) specific disciplinary proceedings initiated by
19 either agency; and

20 (3) the need for persons working on particular
21 projects to be licensed by the board or registered by the Texas
22 Board of Architectural Examiners.

23 (f) If the advisory committee issues an advisory opinion to
24 the board or the Texas Board of Architectural Examiners on a matter,
25 that agency shall notify the committee of the final action taken
26 with regard to the matter. The advisory committee shall consider
27 the action taken by the agency on the matter in any advisory opinion

1 subsequently issued by the committee on a related matter.

2 (g) The board and the Texas Board of Architectural Examiners
3 shall enter into a memorandum of understanding regarding the
4 advisory committee that includes the composition and purpose of the
5 committee.

6 SECTION 19. Section 1001.251, Occupations Code, is amended
7 by adding Subsection (c) to read as follows:

8 (c) The board shall maintain on the board's Internet
9 website:

10 (1) information regarding the procedure for filing a
11 complaint with the board; and

12 (2) a form that a person may use to file a complaint
13 with the board.

14 SECTION 20. Sections 1001.252 and 1001.253, Occupations
15 Code, are amended to read as follows:

16 Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT
17 INVESTIGATION AND DISPOSITION [COMPLAINTS]. (a) The board shall
18 adopt rules that permit the board to receive and investigate a
19 confidential complaint against a license holder or other person who
20 may have violated this chapter. The board shall maintain the
21 confidentiality of the complaint during the investigation.

22 (b) The board by rule shall specify:

23 (1) the manner by which a person may contact the board
24 for assistance in filing a complaint;

25 (2) the place at which a complaint must be filed;

26 (3) the proper form of a complaint; and

27 (4) the information that must be included in a

1 complaint.

2 (c) The board's procedures must permit a member of the
3 public who desires to file a complaint to:

4 (1) speak to an investigator on the staff of the board
5 if the person desires to do so; or

6 (2) easily and conveniently access the board's
7 complaint process without being required to speak to an
8 investigator on the staff of the board if the person does not desire
9 to speak to an investigator.

10 (d) The board shall consider any written grievance against a
11 license holder or other person filed with the board as a complaint.

12 (e) A complaint must include information sufficient for the
13 board to determine whether it has the authority to resolve the
14 complaint. A complaint that contains sufficient information for
15 the board to commence an investigation is not required to include
16 all of the information necessary for the board to determine the
17 validity of the complaint.

18 (f) On receipt of a complaint, the board shall determine
19 whether the board has the authority to resolve the complaint. If
20 the board does not have the authority to resolve the complaint, the
21 board shall dismiss the complaint. If the board has the authority
22 to resolve the complaint, the board shall initiate a disciplinary
23 proceeding against the person who is the subject of the complaint.

24 (g) The board by rule shall prescribe a method for
25 prioritizing complaints for purposes of complaint investigation.
26 In establishing priorities:

27 (1) a complaint that alleges an action that could

1 potentially harm the public takes precedence over a complaint that
2 does not allege an action that could potentially harm the public;
3 and

4 (2) with regard to complaints that do not allege an
5 action that could potentially harm the public, a complaint filed by
6 a member of the public takes precedence over a complaint filed by
7 the staff of the board.

8 (h) The board's staff is responsible for conducting all
9 phases of complaint investigation, including gathering evidence
10 necessary to determine the validity of the complaint.

11 (i) The board may employ or contract with advisors,
12 consultants, engineers, or other persons to provide technical
13 assistance in investigations and disciplinary proceedings. Except
14 for an action involving fraud, conspiracy, or malice, a person
15 whose services are obtained by the board under this subsection is
16 immune from civil liability and may not be subjected to a suit for
17 damages for any investigation, report, recommendation, statement,
18 evaluation, finding made, or other action taken in the course of
19 performing the person's official duties.

20 (j) The board's staff shall regularly report to the board on
21 each complaint dismissed by board staff, including:

22 (1) the name of the complainant;

23 (2) the name of the person who is the subject of the
24 complaint;

25 (3) the basis of the complaint; and

26 (4) the reason for the dismissal of the complaint.

27 (k) Except as provided by Subsection (l), a complaint filed

1 with the board is public information.

2 (1) For any frivolous complaint, the license holder's name
3 and other personal information on the complaint is not public
4 information and must be redacted.

5 (m) In this section, "frivolous complaint" means a
6 complaint that the executive director and investigator, with board
7 approval, determined:

8 (1) was made for the purpose of harassment; and

9 (2) does not demonstrate harm to any person.

10 Sec. 1001.253. COMPLAINT INFORMATION. (a) The board
11 shall:

12 (1) assign a number to each complaint filed with the
13 board; and

14 (2) ensure that each phase of the processing of a
15 complaint is appropriately documented.

16 (b) The board shall maintain a [keep an information] file on
17 [about] each written complaint [relating to a license holder] filed
18 with the board. The file must include:

19 (1) the name of the person who filed the complaint;

20 (2) the date the complaint is received by the board;

21 (3) the subject matter of the complaint;

22 (4) the name of each person contacted in relation to
23 the complaint;

24 (5) a summary of the results of the review or
25 investigation of the complaint; and

26 (6) an explanation of the reason the file was closed,
27 if the board closed the file without taking action other than to

1 investigate the complaint.

2 (c) The board shall provide to the person filing the
3 complaint and to each person who is a subject of the complaint a
4 copy of the board's policies and procedures relating to complaint
5 investigation and resolution.

6 (d) The [~~(b) If a written complaint relating to a license~~
7 ~~holder is filed with the board, the~~] board, at least quarterly and
8 until final disposition of the complaint, shall notify the parties
9 to the complaint of the status of the complaint unless the notice
10 would jeopardize an undercover investigation.

11 SECTION 21. Subchapter F, Chapter 1001, Occupations Code,
12 is amended by adding Sections 1001.254 and 1001.255 to read as
13 follows:

14 Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS.

15 (a) The board shall develop and maintain a complaint tracking
16 system to monitor the processing of complaints filed with the
17 board.

18 (b) The board shall include with the board's annual
19 financial report under Section 2101.011, Government Code, a
20 statistical analysis of the complaints filed with the board during
21 the preceding year, including:

22 (1) the number of complaints filed;

23 (2) a categorization of complaints filed according to
24 the basis of the complaint and the number of complaints in each
25 category;

26 (3) the number of complaints filed by board staff;

27 (4) the number of complaints filed by persons other

1 than board staff;

2 (5) the average length of time required to resolve a
3 complaint;

4 (6) the number of complaints resolved and the manner
5 in which they were resolved, including:

6 (A) the number of complaints dismissed and the
7 reasons for dismissal; and

8 (B) the number of complaints resulting in
9 disciplinary action, the disciplinary action taken, and whether the
10 disciplinary action taken was imposed by stipulation, agreed
11 settlement, consent order, default, or order following a contested
12 case hearing; and

13 (7) the number of complaints filed that are
14 unresolved, the number of those complaints filed by board staff,
15 the number of those complaints filed by persons other than board
16 staff, and the average length of time that the unresolved
17 complaints have been on file.

18 Sec. 1001.255. PUBLIC PARTICIPATION. The board shall
19 develop and implement policies that provide the public with a
20 reasonable opportunity to appear before the board and to speak on
21 any issue under the jurisdiction of the board.

22 SECTION 22. Section 1001.301, Occupations Code, is amended
23 by amending Subsections (b) and (c) and adding Subsections (f) and
24 (g) to read as follows:

25 (b) Except as provided by Subsection (f), a [A] person may
26 not, unless the person holds a license issued under this chapter,
27 directly or indirectly use or cause to be used as a professional,

1 business, or commercial identification, title, name,
2 representation, claim, asset, or means of advantage or benefit any
3 of, or a variation or abbreviation of, the following terms:

- 4 (1) "engineer";
- 5 (2) "professional engineer";
- 6 (3) "licensed engineer";
- 7 (4) "registered engineer";
- 8 (5) "registered professional engineer";
- 9 (6) "licensed professional engineer"; or
- 10 (7) "engineered."

11 (c) Except as provided by Subsection (f), a [A] person may
12 not directly or indirectly use or cause to be used an abbreviation,
13 word, symbol, slogan, or sign that tends or is likely to create an
14 impression with the public that the person is qualified or
15 authorized to engage in the practice of engineering unless the
16 person holds a license and is practicing under this chapter.

17 (f) Notwithstanding the other provisions of this chapter, a
18 regular employee of a business entity who is engaged in engineering
19 activities but is exempt from the licensing requirements of this
20 chapter under Sections 1001.057 or 1001.058 is not prohibited from
21 using the term "engineer" on a business card, cover letter, or other
22 form of correspondence that is made available to the public if the
23 person does not:

- 24 (1) offer to the public to perform engineering
25 services; or
- 26 (2) use the title in any context outside the scope of
27 the exemption in a manner that represents an ability or willingness

1 to perform engineering services or make an engineering judgment
2 requiring a licensed professional engineer.

3 (g) Subsection (f) does not authorize a person to use a term
4 listed in Subsections (b)(2)-(6) or a variation or abbreviation of
5 one of those terms.

6 SECTION 23. Section 1001.303, Occupations Code, is amended
7 to read as follows:

8 Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant
9 for a license under this chapter must submit an [~~a sworn~~]
10 application on a form prescribed and provided by the board.

11 (b) The application must contain:

12 (1) personal information about the applicant, as
13 required by board rule;

14 (2) a description of the applicant's education;

15 (3) a detailed summary of the applicant's actual
16 engineering work;

17 (4) a description of any engineering license or
18 registration previously issued to the applicant and any denial,
19 revocation, or suspension of an engineering license or registration
20 held by the applicant;

21 (5) a description of any criminal offense of which the
22 applicant has been convicted; and

23 (6) at least three [~~five~~] references from engineers
24 [~~individuals~~] having personal knowledge of the applicant's
25 character, reputation, [~~and~~] general suitability for a license, and
26 [~~of whom at least three must be engineers having personal knowledge~~
27 ~~of the applicant's~~] engineering experience.

1 SECTION 24. Section 1001.304, Occupations Code, is amended
2 by adding Subsection (d) to read as follows:

3 (d) The board by rule shall ensure that the examination is
4 administered to applicants with disabilities in compliance with the
5 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
6 seq.), and its subsequent amendments.

7 SECTION 25. Sections 1001.306, 1001.310, and 1001.311,
8 Occupations Code, are amended to read as follows:

9 Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than
10 the 30th day after the date a person takes a licensing examination
11 under this chapter, the [The] board shall notify the person [each
12 ~~examinee~~] of the results of the [an] examination [~~not later than the~~
13 ~~30th day after the date the examination is administered~~].

14 (a-1) If the [an] examination is graded or reviewed by a
15 [~~national~~] testing service:

16 (1) [r] the board shall notify the person [each
17 ~~examinee~~] of the results of the examination not later than the 14th
18 day after the date the board receives the results from the testing
19 service; and

20 (2) if [r]

21 [~~(b) If the~~] notice of the examination results [~~of an~~
22 ~~examination~~] will be delayed for longer than 90 days after the
23 examination date, the board shall notify the person [each ~~examinee~~]
24 of the reason for the delay before the 90th day.

25 (b) The board may require a testing service to notify a
26 person of the results of the person's examination.

27 (c) If requested in writing by a person who fails a

1 licensing [~~the~~] examination administered under this chapter, the
2 board shall furnish [~~provide to~~] the person with an analysis of the
3 person's performance on the examination.

4 Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The
5 board by rule may adopt standards and procedures for issuing a
6 temporary or provisional license under this chapter.

7 (b) The board may issue a provisional license to an
8 applicant currently licensed in another jurisdiction who seeks a
9 license in this state and who:

10 (1) has been licensed in good standing as an engineer
11 for at least two years in another jurisdiction, including a foreign
12 country, that has licensing requirements substantially equivalent
13 to the requirements of this chapter;

14 (2) has passed a national or other examination
15 recognized by the board relating to the practice of engineering;
16 and

17 (3) is sponsored by a person licensed by the board
18 under this chapter with whom the provisional license holder will
19 practice during the time the person holds a provisional license.

20 (c) The board may waive the requirement of Subsection (b)(3)
21 for an applicant if the board determines that compliance with that
22 subsection would be a hardship to the applicant.

23 (d) A provisional license is valid until the date the board
24 approves or denies the provisional license holder's application for
25 a license. The board shall issue a license under this chapter to
26 the provisional license holder if:

27 (1) the provisional license holder is eligible to be

1 licensed under Section 1001.311(b); or

2 (2) the provisional license holder meets the following
3 requirements:

4 (A) the provisional license holder passes an
5 examination that tests the provisional license holder's knowledge
6 and understanding of the laws and rules relating to the practice of
7 engineering in this state;

8 (B) the board verifies that the provisional
9 license holder meets the academic and experience requirements for a
10 license under this chapter; and

11 (C) the provisional license holder satisfies any
12 other licensing requirements under this chapter.

13 (e) The board must approve or deny a provisional license
14 holder's application for a license not later than the 180th day
15 after the date the provisional license is issued. The board may
16 extend the 180-day period if the results of an examination have not
17 been received by the board before the end of that period.

18 (f) The board may establish a fee for provisional licenses
19 in an amount reasonable and necessary to cover the cost of issuing
20 the license.

21 Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person
22 who holds a license or certificate of registration issued by
23 another state or a foreign country may apply for a license in this
24 state.

25 (b) The board may waive any prerequisite to obtaining a
26 license for an applicant after reviewing the applicant's
27 credentials and determining that the applicant holds a license

1 issued by another jurisdiction that has licensing requirements
2 substantially equivalent to those of this state.

3 SECTION 26. Subsection (b), Section 1001.351, Occupations
4 Code, is amended to read as follows:

5 (b) The board by rule may adopt a system under which
6 licenses and registrations expire on various dates during the year.
7 For the year in which the license or registration expiration date is
8 changed, the board shall prorate license or registration fees on a
9 monthly basis so that each license or registration holder pays only
10 that portion of the license or registration fee that is allocable to
11 the number of months during which the license or registration is
12 valid. On renewal of the license or registration on the new
13 expiration date, the total license or registration renewal fee is
14 payable [~~and shall adjust renewal dates accordingly~~].

15 SECTION 27. Sections 1001.352 and 1001.353, Occupations
16 Code, are amended to read as follows:

17 Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later
18 than the 30th day [~~one month~~] before the [~~expiration~~] date [~~of~~]
19 person's license is scheduled to expire, the board shall send [~~mail~~
20 ~~to the person at the last address the person provided to the board~~]
21 written notice of the impending [~~license~~] expiration to the person
22 at the person's last known address according to the records of the
23 board [~~date and the amount of the annual renewal fee for the~~
24 ~~license~~].

25 Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is
26 otherwise eligible to renew a license may renew an unexpired
27 license by paying the required renewal fee to the board before the

1 expiration date of the license. A person whose license has expired
2 may not engage in activities that require a license until the
3 license has been renewed.

4 (b) A person whose license has been expired for 90 days or
5 less may renew the license by paying to the board a renewal fee that
6 is equal to 1-1/2 times the normally [the] required renewal fee and
7 any applicable increase in fees as required by Section 1001.206 [a
8 penalty fee set by the board].

9 (c) A person whose license has been expired for more than 90
10 days but less than two years may renew the license by paying to the
11 board a renewal fee that is equal to two times the normally required
12 renewal fee and any applicable increase in fees as required by
13 Section 1001.206 for each delinquent year or part of a year [all
14 unpaid renewal fees and a penalty fee set by the board].

15 (d) A person whose license has been expired for two years or
16 more may not renew the license. The person may obtain a new license
17 by complying with the requirements and procedures, including the
18 examination requirements, for obtaining an original license [~~that~~
19 ~~are in effect at the time the person applies].~~

20 SECTION 28. Subchapter H, Chapter 1001, Occupations Code,
21 is amended by adding Sections 1001.354 and 1001.355 to read as
22 follows:

23 Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
24 PRACTITIONER. (a) A person who was licensed in this state, moved
25 to another state, and is currently licensed and has been in practice
26 in the other state for the two years preceding the date of
27 application may obtain a new license without reexamination.

1 (b) The person must pay to the board a fee that is equal to
2 two times the normally required renewal fee for the license.

3 Sec. 1001.355. INACTIVE STATUS. (a) An engineer may
4 request inactive status at any time before the expiration date of
5 the person's license. A license holder on inactive status may not
6 practice engineering.

7 (b) A license holder on inactive status must pay an annual
8 fee set by the board.

9 (c) A license holder on inactive status is not required to:

10 (1) comply with the continuing education requirements
11 adopted by the board; or

12 (2) take an examination for reinstatement to active
13 status.

14 (d) To return to active status, a license holder on inactive
15 status must:

16 (1) file with the board a written notice requesting
17 reinstatement to active status;

18 (2) pay the fee for the annual renewal of the license
19 and the fee increase required by Section 1001.206; and

20 (3) provide evidence satisfactory to the board that
21 the person has complied with the continuing education requirements
22 adopted by the board.

23 SECTION 29. Section 1001.405, Occupations Code, is amended
24 by adding Subsection (g) to read as follows:

25 (g) Notwithstanding the other provisions of this section,
26 the board by rule may provide that a business entity that has not
27 previously registered with the board and that is engaged in the

1 practice of engineering in violation of Subsection (b) is not
2 subject to disciplinary action for the violation if the business
3 entity registers with the board not later than the 30th day after
4 the date the board gives written notice to the business entity of
5 the registration requirement. This subsection does not apply to a
6 business entity whose registration has expired.

7 SECTION 30. Section 1001.406, Occupations Code, is amended
8 to read as follows:

9 Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a
10 ~~[public]~~ university recognized by the American Association of
11 Colleges and Universities who has a degree from an engineering
12 program accredited by the Accreditation Board for Engineering and
13 Technology (ABET) has the right to:

14 (1) disclose any college degree received by the
15 person; and

16 (2) use the term "graduate engineer" on the person's
17 stationery or business cards or in personal communications of any
18 character.

19 (b) A graduate engineer who is employed in a firm registered
20 under this chapter and who is working under the direct supervision
21 of a licensed professional engineer may use the term "engineer" on
22 the person's stationery or business cards or in personal
23 communications of any character.

24 SECTION 31. Subchapter J, Chapter 1001, Occupations Code,
25 is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527
26 to read as follows:

27 Sec. 1001.4525. PROBATION. (a) If a person's license

1 suspension is probated, the board may require the person to:

2 (1) report regularly to the board on matters that are
3 the basis of the probation;

4 (2) limit practice to the areas prescribed by the
5 board; or

6 (3) continue or review professional education until
7 the person attains a degree of skill satisfactory to the board in
8 those areas that are the basis of the probation.

9 (b) The board by rule shall adopt written guidelines to
10 ensure that probation is administered consistently.

11 Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection
12 (b), the board may order a person licensed or registered under this
13 chapter to pay restitution to a consumer as provided in an agreement
14 resulting from an informal settlement conference instead of or in
15 addition to imposing an administrative penalty under this chapter.

16 (b) The amount of restitution ordered as provided in an
17 agreement resulting from an informal settlement conference may not
18 exceed the amount the consumer paid to the person for a service
19 regulated by this chapter. The board may not require payment of
20 other damages or estimate harm in a restitution order.

21 Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board
22 member who participated in the investigation of a complaint or in
23 informal settlement negotiations regarding the complaint:

24 (1) may not participate in the discussion of or vote on
25 the matter at a board meeting related to the complaint; and

26 (2) shall state at the meeting why the member is
27 prohibited from participating in the discussion of or voting on the

1 matter.

2 (b) A statement under Subsection (a)(2) shall be entered
3 into the minutes of the meeting.

4 SECTION 32. Chapter 1001, Occupations Code, is amended by
5 adding Subchapter M to read as follows:

6 SUBCHAPTER M. ADVISORY OPINIONS

7 Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own
8 initiative or at the request of any interested person, the board
9 shall prepare a written advisory opinion about an interpretation of
10 this chapter or the application of this chapter to a person in
11 regard to a specified existing or hypothetical factual situation.
12 The board shall respond to requests for opinions within 180 days or
13 affirmatively state its reason for not responding to the request.

14 Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board
15 shall:

16 (1) number and classify each advisory opinion issued
17 under this subchapter; and

18 (2) annually compile a summary of the opinions in a
19 single reference document that is available on the Internet.

20 Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority
21 of the board to issue an advisory opinion under this subchapter does
22 not affect the authority of the attorney general to issue an opinion
23 as authorized by law.

24 Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a
25 defense to prosecution or to imposition of a civil penalty that a
26 person reasonably relied on a written advisory opinion of the board
27 relating to:

1 (1) the provision of the law the person is alleged to
2 have violated; or

3 (2) a fact situation that is substantially similar to
4 the fact situation in which the person is involved.

5 SECTION 33. (a) Not later than January 1, 2004, the Texas
6 Board of Professional Engineers shall adopt the rules required by
7 Section 1001.2035, Occupations Code, as added by this Act.

8 (b) Not later than September 1, 2005, the Texas Board of
9 Professional Engineers shall adopt the written guidelines required
10 by Section 1001.4525, Occupations Code, as added by this Act.

11 (c) The Texas Board of Professional Engineers is not
12 required to issue an advisory opinion under Subchapter M, Chapter
13 1001, Occupations Code, as added by this Act, before January 1,
14 2004.

15 SECTION 34. (a) This Act takes effect September 1, 2003.

16 (b) The changes in law made by Sections 1001.102 and
17 1001.103, Occupations Code, as amended by this Act, and Section
18 1001.112, Occupations Code, as added by this Act, in the
19 prohibitions on or qualifications of members of the Texas Board of
20 Professional Engineers do not affect the entitlement of a member
21 serving on the Texas Board of Professional Engineers immediately
22 before September 1, 2003, to continue to serve and function as a
23 member of the Texas Board of Professional Engineers for the
24 remainder of the member's term. Those changes in law apply only to
25 a member appointed on or after September 1, 2003.

26 (c) The change in law made by Section 1001.108, Occupations
27 Code, as amended by this Act, does not affect the entitlement of a

1 person who was serving as presiding officer of the Texas Board of
2 Professional Engineers immediately before September 1, 2003, to
3 continue to serve and function in that capacity for the remainder of
4 the person's term as presiding officer. That change in law applies
5 only to the designation of a presiding officer of the board after
6 that person's term as presiding officer expires.

7 (d) The changes in law made by this Act to Chapter 1001,
8 Occupations Code, relating to the investigation of a complaint
9 apply only to a complaint filed with the Texas Board of Professional
10 Engineers on or after the effective date of this Act. A complaint
11 filed with the board before the effective date of this Act is
12 governed by the law as it existed immediately before that date, and
13 the former law is continued in effect for that purpose.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 277 passed the Senate on April 22, 2003, by a viva-voce vote; May 21, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2003, House granted request of the Senate; May 31, 2003, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 277 passed the House, with amendments, on May 8, 2003, by a non-record vote; May 24, 2003, House granted request of the Senate for appointment of Conference Committee; May 31, 2003, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor